Kennedy

need to seek additional appropriations from Congress.

Thus, despite Mr. Regan's claims to the contrary, U.S. taxpayer funds will be utilized to help Argentina. He should have been more honest about this. So, too, I question why the package needed to be so complex. Perhaps Mr. Regan thought this would confuse the fact that in the final analysis the United States is helping to take the banks off the hook—at least in the short run. If this is necessary in the short run to give Argentina breathing space—so be it. However, ultimately the banks and debtor countries such as Argentina are going to have to work out a longer term solution to the problems. The banks will have to own up to the fact that they have been too greedy in their excessive charges on loans to these countries, and the countries will have to concede that they have attempted to live beyond their means. Once these things occur, then I believe a workable agreement can be developed between the parties involved and the U.S. taxpayer will not be called upon time and time again to come to the rescue.

Mr. President, I yield back the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, as indicated earlier, there is a briefing to be conducted under the auspices of the Intelligence Committee in S-407 for all Senators at 3:30 p.m. In order to make sure that every Senator has an opportunity to attend, I ask unanimous consent that the Senate now stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 3:31 p.m., recessed subject to the call of the Chair.

The Senate reassembled at 6:30 p.m., when called to order by the Presiding Officer (Mr. ABDNOR).

MISCELLANEOUS TARIFF, TRADE AND CUSTOMS MATTERS

FEDERAL BOAT SAFETY ACT AMENDMENT

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, if I could have the attention of Senators, it is now 6:30 in the evening. First, I must apologize to all Members for delay in the regular proceedings of the Senate, but I think it was worthwhile. I hope so.

It will come as no surprise to Members to know that there is a great deal of controversy swirling about the Kennedy amendment and the general situation in Central America, to say nothing of the complications we will encounter when we finally get down to the business at hand, which is the tax bill as an amendment to the boat bill.

Mr. President, I have a unanimous-consent request that I would like to pose which I hope will cut the time and let us proceed, not only with the disposition of the Kennedy amendment and both its divisions, but also permit us to get on with the business at hand, which I know the Senator from Kansas and the Senator from Louisiana are very anxious to do.

I have described this to the minority leader and the distinguished Senator from Massachusetts, and I have discussed it, of course, with Members on this side. Let me put the request at this time.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that the order of yesterday providing 30 minutes of debate and the recognition of the majority leader for the purpose of making a tabling motion or motions be vitiated.

I further ask unanimous consent that no tabling motion be in order against division 1 of the Kennedy amendment.

I ask unanimous consent, Mr. President, that a vote occur up or down on the Kennedy amendment immediately.

I ask unanimous consent that after the vote on the first division of the Kennedy amendment that the second division be withdrawn.

I further ask unanimous consent that no other Central America amendment be in order to this bill.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, reserving the right to object, first of all I want to express my appreciation both to the majority leader and the minority leader for hopefully getting us to a point where we will be able to vote up or down on the merits of this particular amendment, which is the amendment dealing with the mining in Nicaragua.

I would like to address my inquiry to the majority leader with regard to the latter part of his unanimous-consent request. That is with regards to prohibiting further amendments to this legislation on the subject of Central America.

I have no other amendments at this time. I would hope that the Senate would have an opportunity to act on the fundamental bill at hand. Realistically, I think it is probably unlikely that we will complete this legislation this week, because we get into the situation of the Easter recess. Then we will come back and be on this measure again. We have seen over a period of really recent days where there have been developments in Central America which need the attention of this body in addressing those issues and those questions.

I certainly welcome the first aspect of the unanimous-consent agreement, but I would like to find out or get some assurance from the majority leader that we would not be precluded from discussing or debating or even at least some form of action on Central America for what may very well be a period of time which includes the next 2 or 3 weeks, given what has happened over the period of the past days. I am wondering if the leader will address that particular concern.

Mr. BAKER. Mr. President, I will be happy to. I discussed this matter with the distinguished Senator from Massachusetts and the minority leader just before I made the request, so I anticipated his query to me. I thank him for letting me know in advance his concern.

Mr. President, first, let me say that I have no desire to hogtie the Senate and prevent it from addressing the question of the Senator if, when we return from the Easter recess, it appears there are circumstances that warrant that. Indeed, I would insist that the Senate have that opportunity. What I would propose, Mr. President, and what I would assure the Senator from Massachusetts of, is this: When we return, if there are new developments in Central America or developments which come to our attention after our return that appear to be of such a nature that they require urgent attention of the Senate, I will consult with the distinguished chairman of the Intelligence Committee, Senator GOLDWATER, with the Senator from Massachusetts and with the minority leader. If there appears to that group that there is a matter of urgent importance that we should address, notwithstanding we have not finished the boat bill, I assure the Senator from Massachusetts I will find a way to do that perhaps by moving off this bill temporarily and on to another bill that would carry our deliberations in that respect.

I give my assurance to the Senator that I am willing to do that. I do not make that assurance as an idle gesture, but rather in good faith because I understand and I appreciate his concern for locking out Senate consideration of any other matter in the future if circumstances warrant.

Mr. KENNEDY. Mr. President, the majority leader's word has been his bond. That kind of assurance from the majority leader would certainly, I think, respond to my concerns. I cannot speak for other Members of the Senate who debated this issue at very great length and with very considerable concern. But I think that the assurance which has just been given by the majority leader to the Members of this body, and I would think that means something to the Members of the body because I know this matter of Central America is of great concern not only to Members on our own side, but Members on the side

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of the majority leader, I would say that that would resolve my own particular concerns. I cannot speak for others.

With understanding, I wonder if it would be appropriate for me to inquire how the majority leader would expect to vote on this particular amendment?

Mr. BAKER. After the agreement is entered into, I will vote for the amendment.

Mr. KENNEDY. I would appreciate an early decision. I thank the majority leader and the minority leader for their cooperation.

Mr. BYRD. Mr. President, I personally have no objection to this agreement. The chief author of the amendment has indicated that the agreement is all right with him. I have no problem with it. I would, however, have to run our hotline on the request before I could finally agree to it.

The majority leader has indicated that his side had a meeting and has indicated the outcome of that meeting. I have not had a chance to run this proposal by any Members on our side of the aisle. I owe them that obligation. I would suggest that the majority leader put in a quorum call and give us, say, 5 minutes to run the hotline. Once we have done that, I will be back to him and report to him.

Mr. BAKER. I will be happy to do that.

Mr. HELMS. Mr. President, reserving the right to object and I shall not object, just to be sure that there is nothing misunderstood, it is that there would be a vote on the first half of the Kennedy amendment and that the second half will be withdrawn.

Mr. BAKER. That is correct.

Mr. HELMS. And that there will be no further amendments in order relating to Central America on this bill.

Mr. BAKER. That is correct.

Mr. HELMS. And the Senator believes that in a short while, there will be a vote?

Mr. BAKER. Yes, Mr. President, I do believe that.

Mr. HELMS. Mr. President, we should begin with a general caveat that it does not advance the U.S. national interest at any time to talk about specific covert actions, even if they are successful. There are those who may have the opinion that covert actions in and of themselves are unwise. I do not take that position. I feel that the President of the United States has the constitutional authority to conduct our foreign policy. The use of covert actions is a classic tool of foreign policy. When we elect a President, we elect him to use his judgment in the employment of that tool.

We should also begin with the general assumption that the United States should not, as a general rule, accept the jurisdiction of the World Court in matters of our national security. The sovereignty of the United States should remain paramount in our considerations.

Mr. President, if we surrender jurisdiction to the World Court in something that the President judges will impact on our national security, then we would be surrendering our sovereignty. It is all very nice to speak of the "rule of law"; but the rule of law is an ideal that is seldom met in a world of conflicting cultures, traditions, and ideologies. We must not put our own paramount national interests in jeopardy by submitting to the judgment of an international court. In the long run, the most fundamental right of a nation is the right to protect its security.

All this having been said, we should also take a look at the substance of the controversy. If the covert actions which the press says have been taken have actually been taken, then I could easily understand the considerations which might have led the President to make the judgment to implement them. The country of Nicaragua has become a vast storehouse for arms threatening the national security of the region, including our own security. It has become the Libya of the Caribbean, a forward base for the logistics of supplying revolutionary movements in the Western Hemisphere.

The prime providers of those arms are the Soviet Union and Cuba. Those arms are a present danger to Costa Rica and Honduras. They are the proximate danger to the free elections in El Salvador. The Subcommittee on Western Hemisphere Affairs recently heard testimony from Dr. Fred Ikle, the Under Secretary of Defense for Policy. Dr. Ikle said:

A year ago, I reported to this Committee that in 1981 the Soviets had delivered 63,000 tons of arms to Cuba, the highest yearly total since 1962. Today I must report to you that the Soviet deliveries have increased further, to 68,000 tons in 1982—about one billion dollars worth of military assistance.

Mr. President, those deliveries to Cuba indicate the growing presence of Soviet military arms in the region. We also know that those arms are being shipped from Cuba to Nicaragua, as well as directly from other Soviet bloc ports on Soviet vessels. Nicaragua has admitted to having increased the number of military and security forces to 138,000. This includes 39 percent of all the males over 18.

According to a Sandinista official, the first training class of 30 pilots—part of about 70 Nicaraguans training in Bulgaria—was due to complete its training in December 1983. Meanwhile, improvements have continued on existing landing strips in Nicaragua to allow them to accommodate modern jet aircraft. There are presently 36 new military bases and garrisons in Nicaragua now under construction or completed.

Approximately 50 Soviet tanks have been introduced into Nicaragua, enough to form a second battalion. Nicaragua has received about 1,000 East German trucks, 100 antiaircraft guns, and three brigades of Soviet artillery that can achieve ranges over 27 kilometers. Nicaragua has also obtained additional assault helicopters and transport aircraft to improve their mobility.

Mr. President, this and similar equipment is coming directly from Soviet bloc ports to Nicaraguan ports. It seems to me to be an entirely prudent and responsible action to take appropriate steps to stop such shipments. Such considerations could well have led to a decision to mine the ports receiving the military equipment.

Those who object to such policies should be prepared to take responsibility for the alternative—the collapse of neighboring countries into Marxist-Leninist hands. Nicaraguan freedom fighters have irresistible reasons for doing everything in their power to see that their country does not fall irreversibly into the hands of a totalitarian power which considers Castro, Stalin, Lenin, and Marx as a suitable successor to the imperfect political tradition and the ardently Christian culture of Nicaragua.

We owe at least the same to our allies in Guatemala, Honduras, and El Salvador. Whoever is dropping mines into the waters around Nicaraguan ports, wherever they are from, are working for the best interests of the Nicaraguan people, and of all the people of the region. Whatever role, if any, may have been played by U.S. officials should not blind us to the fundamental truth. What we should do is applaud.

We should not and must not do anything which will concede anything of our national sovereignty to any international body, or to any group of journalists, or to "international opinion," or to the "international community," whatever that is. A policy which appeals to the rule of law to destroy the basis for a rule of law—that is to say, the fundamental freedoms of people everywhere—can have no part in our thinking. We cannot stand idly by and wait until the military buildup becomes irresistible.

Mr. MOYNIHAN. Mr. President, may I simply make a brief statement for the information of the Senate with respect to the second section of the amendment of the Senator from Massachusetts? It holds that "The United States shall immediately withdraw the modification submitted on April 6, 1984, to the jurisdiction of the International Court of Justice over the United States with respect to disputes with any Central American state or arising out of or related to events in Central America."

May I inform the Senate, as I am sure many learned Members know, that the United States does not have the right under our original agreement with the Court to make the proposal which the Secretray of State did make on Friday to the Secretary General of the United Nations. The ratifi-

cation which the Senate agreed to, stated by President Truman, indicated the four areas in which we would submit to jurisdiction, then concluded:

Provided further, That this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Mr. President, by our own previous agreement, we do not have the right simply to declare that we will no longer accept that jurisdiction. As a matter of fact, in the report of the Committee on Foreign Relations presented to this body on August 2, 1946, it was specifically noted:

The provision for 6 months' notice of termination after the 5-year period has the effect of a renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding.

Mr. President, how it could come to pass that the Department of State would not know what were the agreements which the United States has made, what the commitments are that it has made, and what is the legislative history explicit of those agreements is a matter of wonder to this Senator in all events.

Mr. President, I ask unanimous consent that I may have printed in the RECORD at this point the declaration of the United States accepting the compulsory jurisdiction of the court with respect to other nations who did the same with respect to certain specific subjects, and also the report of the Committee on Foreign Relations which provides the specific legislative history behind the provision that requires 6 months' notice before any such exclusion can take place.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECLARATION

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of 2 August 1946 of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to—

(a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or

(c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August 1946.

(Signed) HARRY S. TRUMAN.

REPORT OF COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations, to whom was referred the resolution (S. Res. 196) providing that the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory ipso facto and without special agreement. In relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in certain categories of legal disputes hereafter arising, hereby report the same to the Senate, with an amendment with the recommendation that the resolution do pass as amended.

A. TEXT OF RESOLUTION

Following is the text of the resolution, as amended by the committee:

"*Resolved (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

"a. the intepretation of a treaty;

"b. any question of international law;

"c. the existence of any fact which, if established, would constitute a breach of an international obligation;

"d. the nature or extent of the reparation to be made for the breach of an international obligation.

Provided, That such declaration should not apply to—

"a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

"b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

provided further, That such declaration should remain in force for a period of 5 years and thereafter until the expiration of 6 months after notice may be given to terminate the declaration."

B. HEARINGS OF THE SUBCOMMITTEE

On November 28, 1945, Mr. MORSE submitted Senate Resolution 196 for himself, Mr. TAFT, Mr. GREEN, Mr. FULBRIGHT, Mr. SMITH, Mr. FERGUSON, Mr. AIKEN, Mr. BALL, Mr. CORDON, Mr. WILEY, Mr. TOBEY, Mr. MAGNUSON, Mr. JOHNSTON of South Carolina, Mr. MYERS, and Mr. MCMAHON. The resolution was referred to the Committee on Foreign Relations. On June 12, 1946, Chairman CONNALLY appointed a subcommittee consisting of Senator THOMAS (Utah) as chairman, Senator HATCH and Senator AUSTIN to hear witnesses on the resolution and to recommend any amendments that might seem appropriate.

The subcommittee held hearings on July 11, 12, and 15, with Senator Morse, Dean Acheson (Acting Secretary of State), and Charles Fahy (legal adviser of the Department of State) appearing and a number of other witnesses testifying on behalf of important private organizations. Outstanding jurists and international lawyers also submitted statements for the record. Witnesses appeared or statements were submitted from the following organizations:

American Bar Association.
American Society of International Law.
American Association of University Women.
General Federation of Women's Clubs.
Young Women's Christian Association.
Americans United for World Government.
Friends Committee on National Legislation.
National League of Women Voters.
Federal Bar Association.
Women's Action Committee for Lasting Peace.
Federal Council of the Churches of Christ in America.
Catholic Association for International Peace.
Pennsylvania Bar Association.
National Council of Jewish Women.
National Education Association.

C. OVERWHELMING PUBLIC SUPPORT

The subcommittee was impressed by the fact that all the witnesses who appeared were enthusiastically in favor of the acceptance on the part of the United States of the jurisdiction of the International Court of Justice with respect to legal disputes. The general feeling seemed to be that such a step taken now by the United States would be the natural and logical sequel to our entry into the United Nations. Twelve months' consideration since the signing of the Charter has strengthened the conviction that this action would immediately increase faith in the efficacy of the United Nations to promote order and peace.

This relative unanimity of American public opinion was demonstrated on December 18, 1945, when the house of delegates of the American Bar Association, without a dissenting vote, passed a resolution urging the President and the Senate to take appropriate action at the earliest practicable time to accept the compulsory jurisdiction of the court. The American Society of International Law, on April 27, 1946, likewise adopted a favorable resolution by a unanimous vote. Many other national organizations, with large memberships, including the American Association of University Women, the General Federation of Women's Clubs, the Federal Bar Association, the Inter-American Bar Association, the Federal Council of Churches, the National League of Women Voters, the American Veterans Committee, the National Education Association, the National Council of Catholic Women, and the American Association for the United Nations, have similarly endorsed the proposal.

D. FAVORABLE ACTION BY FOREIGN RELATIONS COMMITTEE

On July 17 and 24 the subcommittee reported its findings to the Senate Foreign Relations Committee. After a discussion of the legal and constitutional issues involved (see secs. G and J below) the committee reported the resolution to the Senate for favorable action. The vote, which was taken on July 24, was unanimous.

E. PURPOSE OF THE RESOLUTION

The immediate purpose of the resolution is to authorize the President to file with the

Secretary General of the United Nations a declaration accepting the compulsory jurisdiction of the International Court of Justice over certain categories of legal disputes arising between the United States and any other nation which has accepted the same obligation. The United States would acquire the right and duty to sue or be sued in respect to such other States and would give the Court the power to decide whether the case properly falls within the terms of the agreement.

The ultimate purpose of the resolution is to lead to general world-wide acceptance of the jurisdiction of the International Court of Justice in legal cases. The accomplishment of this result would, in a substantial sense, place international relations on a legal basis, in contrast to the present situation, in which states may be their own judge of the law.

The United States has now become a member of the Court, but membership in itself means comparatively little. It is true that States can agree to submit specified cases to the Court, but they have always been able to settle their disputes by arbitration, assuming they could agree to do so. So long as individual members can refuse to be haled into the Court a regime of law in the international community will never be realized. The most important attribute of this or any other court is to hear and decide cases. For this function it must have jurisdiction of the parties and the subject matter.

F. OBLIGATIONS UNDER THE CHARTER OF THE UNITED NATIONS

The undertaking of this obligation by members of the United Nations is a logical fulfillment of obligations already expressed in the Charter. The preamble expresses the determination of the peoples of the United Nations—

"To estalish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained," and to this end "to insure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest."

Among the purposes of the United Nations set forth in article 1 is—

"To bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

One of the principles of the Organization as set forth in article 2 is that—

"All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

Article 36, paragraph 3, of the Charter provides that the Security Council should "take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the statute of the Court."

In addition, by virtue of the general right of states to bring disputes before the Security Council, any state is liable to have its political disputes brought before the Council without its consent and to be subject to such moral obligation as attaches to a recommendation of the Council (arts. 36 and 37 of the charter). It is incongruous that such rights and obligations should exist with respect to political disputes but that there should be no similar obligation for the members of the United Nations to submit their legal disputes to adjudication.

G. JURISDICTION CONFERRED, DEFINED, AND LIMITED

The scope of the jurisdiction to be conferred pursuant to this resolution is carefully defined and limited.

There is, in the first place, a general limitation of jurisdiction to legal disputes. The resolution, like article 36, paragraph 2, of the Court statute, states this limitation in general terms and proceeds to define the four categories of disputes thus included. These are:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

A second major limitation on the jurisdictions conferred arises from the condition on autocracy. This is again specified in the resolution in the language of the statute, the pertinent phrase being as follows: "recognizing * * * in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice."

Jurisdiction is thus conferred only as among states filing declarations. In addition, the similar phrase in the Statute of the Permanent Court of International Justice was interperted by the Court as meaning that any limitation imposed by a state in its grant of jurisdiction thereby also became available to any other state with which it might become involved in proceedings, even though the second state had not specifically imposed the limitation. Thus, for example, if the United States limited its grant of jurisdiction to cases "hereafter arising," this country would be unable to institute proceedings regarding earlier disputes, even though the defendant state might not have interposed this reservation.

A third limitation specified in the resolution is that the United States should bind itself only as to disputes arising in the future. The United States may not, therefore, be confronted with old controversies as a result of filing the proposed declaration.

A fourth limitation provides that the proposed action shall not impede the parties to a dispute from entrusting its solution to some other tribunal if they so agree. The same provision is found in the Charter of the United Nations, article 95.

The fifth limitation is that the proposed declaration shall not apply to matters which are essentially within the domestic jurisdiction of the United States. A provision similar in principle is found in article 2, paragraph 7, of the Charter, providing that nothing in the Charter shall authorize the organization to intervene in essentially domestic matters. The committee feels that the principle is also implicit in the nature of international law, which, under article 38, paragraph 1, of the statute, it is the duty of the Court to apply. International law is, by definition, the body of rights and duties governing states in their relations with each other and does not, therefore, concern itself with matters of domestic jurisdiction. The question of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since, if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction. It is plainly the intention of the statute that such questions should be decided by the Court, since article 36, paragraph 6, provides:

"In the event of a dispute as to whether the court has jurisdiction, the matter shall be settled by the decision of the Court."

It was also brought to the attention of the subcommittee that a number of states, in filing declarations under the statute of the Permanent Court of International Justice, interposed reservations similar to that of the resolution under consideration, but in no case did they reserve to themselves the right of decision. The committee therefore decided that a reservation of the right of decision as to what are matters essentially within domestic jurisdiction would tend to defeat the purposes which it is hoped to achieve by means of the proposed declaration as well as the purpose of article 36, paragraphs 2 and 6, of the statute of the Court.

The resolution provides that the declaration should remain in force for a period of 5 years and thereafter until 6 months following notice of termination. The declaration might, therefore, remain in force indefinitely. The provision for 6 months' notice of termination after the 5-year period has the effect of a renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding.

Hon. John Foster Dulles, adviser to the State Department in relation to the Dumbarton Oaks proposals and adviser to the United States delegation to the United Nations Conference on International Organization, which drafted the Charter and the statute of the Court, filed a memorandum with the subcommittee favoring agreement by the United States to submit to impartial adjudication its legal controversies. He pointed out that failure to take that step would be interpreted as an election on our part to rely on power rather than on reason.

Mr. Dulles advocated that the United States ought now to make the declaration submitting this country to the jurisdiction of the Court according to article 36(2) of the Court statute. He suggested, however, clarification of certain matters in the declaration to wit:

"1. Advisory opinions: The compulsory jurisdiction should presumably be limited to disputes which are actual cases between states as distinct from disputes in which advisory opinions may be sought."

On this point the committee view is that the jurisdiction to be accepted pursuant to Senate Resolution 196 is coextensive with the jurisdiction defined in article 36(2) of the Statute of the Court, which is limited to legal disputes as distinct from the broader category of cases referred to elsewhere in the statute.

With respect to Mr. Dulles' suggestion, Hon. Charles Fahy, legal adviser of the State Department, made the following reply:

"The declaration under article 36 (2) would grant jurisdiction in 'all legal disputes,' as therein described. But the jurisdiction of the court (art. 36 (1)) extends to 'cases which the parties refer to it' and 'all matters especially provided for in the Charter of the United Nations or the treaties and conventions in force.' Thus the Court's possible jurisdiction is broader than the jurisdiction conferred by a declaration under article 36 (2). The provisions of article 36 (2) are limited to 'legal disputes.' This compulsory jurisdiction clearly excludes cases which are not legal disputes, such as a case to be decided ex acquo et bono under article 38 (2) if the parties separately so agree. Such agreement, of course, would be over and above any jurisdiction accepted by the proposed declaration under article 36 (2). The only jurisdiction of the Court with respect to advisory opinions (art. 65) is as to a legal question on request of whatever body may be authorized to make such a request under the Charter. It is entirely apart

from the compulsory jurisdiction which a state grants by its declaration under article 36 (2). No provision in the declaration would seem necessary to make it clear that the declaration under article 36 (2) is indeed limited to the jurisdiction covered by that article.

"2. Reciprocity: Jurisdiction should be complusory only when all of the other parties to the dispute, have previously accepted the compulsory jurisdiction of the Court.

The committee considered that article 59 of the Court statute removed all cause for doubt by providing:

"The decision of the Court has no binding force except between the parties and in respect of that particular case.

If the United States would perfer to deny jurisdiction without special agreement in disputes among several states, some of which have not declared to be bound, article 36 (3) permits it to make its declaration conditional as to the reciprocity of several or certain states.

Mr. Dulles' objection might possibly be provided for by another subsection in the first proviso of the resolution, on page 2, after line 14, reading:

"c. Disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction.

"3. International law: If the basic law of the case is not found in an existing treaty or convention, to which the United States is a party, there should be a prior agreement as to what are the applicable principles of international law.

The committee considered both the policy and the parliamentary problems this suggestion raises and decided to leave Senate Resolution 196 unchanged as to this point, for the following reasons:

Article 92 provides:

"The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter."

The Charter cannot be amended by a mere declaration of some of the states parties to the present statute. What a state may do is limited by article 36 (3):

"The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time."

This does not permit a state to condition submission upon different principles of international law than those which article 38 commands to be used, thus:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

"a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

"b. international custom, as evidence of a general practice accepted as law;

"c. the general principles of law recognized by civilized nations;

"d. subject to the provisions of article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto."

To accomplish substantial alteration of the applicable principles of the international law would require consent of all the other parties to the Charter. The purpose of this declaration is to avoid the procedural necessity of "Special agreement" and to recognize jurisdiction ipso facto over the specified subject matter and parties.

Hon. Charles Fahy, legal adviser of the State Department, in a memorandum prepared for the committee, replied to Mr. Dulles' suggestion as follows:

"3. Mr. Dulles suggests there should be prior agreement as to what are the applicable principles of international law if the basic law of the case is not found in an existing treaty or convention. He feels that to permit jurisdiction of legal disputes concerning "any question of international law" is too vague at this time.

"It is most inadvisable to accept this view. It would seriously impede the progress of the Court in the accomplishment of its purpose. The procedure followed in the case of the Alabama arbitration, referred to as an instance where previous agreement on the applicable law was had, was long before the establishment of the Court. The Charter of the United Nations and the present statute of the Court are designed to enlist sufficient confidence in judicial determinations by the Court to enable it to become a useful organ in the settlement of legal disputes. To require now an agreement, in advance of submission to the Court, on the applicable principles of international law would take from the Court one of the principal purposes of its creation. The United States should not insist on such a requirement. Whatever risk to the United States is involved in entrusting cases to the Court for its determination of the applicable basis of decision under international law is outweighed by the tremendous advance which would be made by our acceptance of such risk in the development of judicial processes in the world order."

Other points referred to the committee by Mr. Dulles for clarification related to the problem of domestic jurisdiction, the possibility of resorting to other tribunals, and the desirability of establishing a time limit for any declaration the United States might make.

As has been indicated above, domestic jurisdiction is safeguarded by article 1 (1) of the Charter of the United Nations, limiting the purposes of the United Nations to international disputes or situations, by article 2 (7) excluding domestic jurisdiction. The committee accepted article 36 (6) of the statute as covering this point.

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The right to submit disputes to other tribunals is reserved in Senate resolution 196, page 2, line 8. This reservation is permitted by article 95 of the Charter.

With respect to a possible time limitation, Senate Resolution 196 provides for 5 years' duration, plus time of 6 months following notice of termination of the declaration. A further discussion of these points will be found in the first part of section (G) above.

H. COMPULSORY JURISDICTION PRIOR TO THE UNITED NATIONS

The first important step in the direction of compulsory jurisdiction was taken by the Advisory Committee of Jurists appointed by the League of Nations in 1920 to prepare the Statute of the Permanent Court of International Justice. This committee, which included among its members the Honorable Elihu Root, former member of the Senate Foreign Relations Committee, Secretary of War, and Secretary of State, recommended a draft providing for general compulsory jurisdiction over specified categories of legal disputes. It was proposed that this should be binding upon all parties to the statute. This provision proved unacceptable to some of the larger powers when it was presented to the League Council and Assembly, and there was substituted for it a provision very similar to article 36, paragraph 2, of the present statute, enabling such states as desired to do so to agree among themselves to accept the jurisdiction of the Court as to the enumerated categories of legal disputes.

Under this provision some 44 states, including 3 of the 5 states now permanent members of the Security Council (Great Britain, France, and China), at one time or another deposited declarations accepting this jurisdiction.

Proceedings were invoked in 11 cases under these declarations two of which proceeded to final determination. One of these was the Eastern Greenland case, involving conflicting claims to territory by Norway and Denmark. Upon the rendering of the decision of the Court, Norway withdrew the decrees affecting the territory which had precipitated the dispute. The second case which went to decision involved a claim by the Netherlands against Belgium for alleged wrongful diversions of water from the Meuse River. The other nine cases were terminated on procedural points or were withdrawn.

I. COMPULSORY JURISDICTION UNDER THE UNITED NATIONS

The negotiations leading to the conclusion of the statute of the new International Court of Justice saw a renewal of the effort to obtain general compulsory jurisdiction. It is indicated in the Report of the 1945 Committee of Jurists, which met in Washington to formulate proposals relating to the judicial organ of the proposed world organization, that a majority of the Committee was in favor of compulsory jurisdiction. At San Francisco the discussion was renewed, and again a very substantial body of opinion was shown in favor of general compulsory jurisdiction. Due to the opposition of some states and the doubtful position of others, it was felt, however, that such a provision might endanger acceptance of the Charter, of which the statute was to be an integral part. This was the position of the United States delegation. It was, therefore, agreed to retain the optional provision in a form similar to that employed in the Statute of the Permanent Court of International Justice. This is the present article 36, paragraph 2 of the statute, pursuant to which the action envisioned by present resolution would be taken.

The San Francisco Conference added an additional paragraph to article 36 of the statute, according to which declarations accepting the jurisdiction of the old Court, and remaining in force, are deemed to remain in force as among the parties to the present statute for such period as they still have to run. Nineteen declarations are currently in force under this provision.

A further indication of the sentiment prevailing among United Nations delegations at San Francisco was the adoption by the Conference of a recommendation to the members of the Organization—"that as soon as possible they make declarations recognizing the obligatory jurisdiction of the International Court of Justice according to the provisions of article 36 of the statute."

J. THE CONSTITUTIONAL ISSUES INVOLVED

During the discussion which took place in the subcommittee three important constitutional issues were raised. These issues were: (1) Can the proposed action be taken by the treaty-making process or is a joint resolution of the two Houses preferable; (2) is it proper procedure to obtain the advice and consent of the Senate prior to the deposit of the declaration by the President; and (3) would the deposit of the declaration by the

President establish treaty relations between the United States and the United Nations or between the United States and the various members of the United Nations who have deposited similar declarations.

With respect to the first issue, a declaration of this kind is no doubt unique so far as the United States is concerned. No one however, can doubt the power of this Government to make such a declaration. The question is one of procedure. During the debates on the United Nations Charter the problem was discussed at some length on the floor of the Senate, and it was generally agreed that the President could not deposit the declaration without congressional action of some kind granting him the authority to do so. To clarify the issue Senator VANDENBERG requested an opinion of Mr. Green Hackworth then legal adviser of the Department of State. The pertinent paragraph of this opinion. Which Senator VANDENBERG read on the floor of the Senate on July 28, 1945, follows:

"If the Executive should initiate action to accept compulsory jurisdiction of the Court under the optional clause contained in article 36 of the statute, such procedure as might be authorized by the Congress would be followed, and if no specific procedure were prescribed by statute, the proposal would be submitted to the Senate with request for its advice and consent to the filing of the necessary declaration with the Secretary General of the United Nations."

Since that time both the President and the Secretary of State have indicated that, in their opinion, either the procedure outlined the Senate Resolution 196 (calling for a two-thirds vote of the Senate) or that outlined in House Joint Resolution 291 (calling for a simple majority vote of the two Houses) would furnish a satisfactory legal basis for acceptance by the United States of the compulsory jurisdiction clause.

Inasmuch as the declaration would involve important new obligations for the United States, the committee was of the opinion that it should be approved by the treaty process, with two-thirds of the Senators present concurring. The force and effect of the declaration is that of a treaty, binding the United States with respect to those States which have or which may in the future deposit similiar declarations. Moreover, under our constitutional system the peaceful settlement of disputes through arbitration or judicial settlement has always been considered a proper subject for the use of the treaty procedure. While the declaration can hardly be considered a treaty in the strict sense of that term, the nature of the obligations assumed by the contracting parties are such that no action less solemn or less formal than that required for treaties should be contemplated.

With respect to the second issue the answer may be found in the Constitution itself, Article 2, section 2, provides that the President shall have "power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." It is evident that the advice and consent of the Senate is equally effective whether given before, during, or after the conclusion of the treaty. In fact, President Washington approached the Senate for its advice and consent prior to the negotiation of treaties, and this practice was followed on occasion by other Presidents. While the practice of prior consultations with the Senate fell into disuse after 1816, a recent precedent may be found in the convention of 1927, extending the General Claims Commission, United States and Mexico of 1923. The treaty was signed on August 16, 1927, pursuant to a Senate resolution of February 17, 1927. A similiar example is the convention of 1929, again extending the life of the Commission. The convention was signed on August 17, 1929, purusuant to the Senate resolution of May 25, 1929.

With regard to the third issue, the proposed declaration would not constitute, in any sense, an agreement between the United States and the United Nations. It is rather a unilateral declaration having the force and effect of a treaty as between the United States and each of the other states which accept the same obligations. It is merely an extension of the general principle that any two states may agree to submit cases to arbitration or judicial settlement. The so-called optional clause would permit a large number of states to take such action with respect to the four categories of legal cases enumerated.

As to whether the United States can enter into a treaty with the United Nations, the question is not here at issue. In any event, it is clear that the United States can conclude agreements with the United Nations, inasmuch as the United Nations Participation Act authorized the President to take such action in conformity with the pledge of the United States to make armed forces available to the Security Council under article 43 of the Charter. Moreover, there appears to be nothing in the Constitution which forbids the conclusion of a treaty between the United States and an international organization.

If it follows that the legal capacity of the United Nations is all that is required to enable the United States and the United Nations to enter into treaty relationships, article 104 of the Charter would seem to establish that authority. Article 104 reads:

"The Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes."

K. DESIRABILITY OF SPEEDY ACTION

Most of the witnesses appearing before the subcommittee expressed the hope that the Senate would act speedily in order to demonstrate once more the conviction of the people of the United States that peace will be possible only if law and justice are firmly embedded in the foundations of the United Nations. To be sure, the extension of the compulsory jurisdiction of the International Court of Justice will not usher the world automatically into an era of peace; it is only one important step in man's long and painful march toward a warless world. The acceptance by the United States of the compulsory jurisdiction clause, however, would constitute a step of great psychological and moral significance. It would help develop a spirit of trust and confidence, particularly on the part of the small states, toward the United States. And it would give impetus to the principle of the peaceful settlement of disputes as the judges of the new Court begin their work at the Peace Palace in The Hague.

On July 28, 1945, the Senate ratified the United Nations Charter by the overwhelming vote of 89 to 2. Since that time the people of the United States, the Senate, the House of Representatives, the President, and the Secretary of State have repeatedly asserted the conviction that the foreign policy of the United States must be centered about the activities and the organs of the United Nations. The International Court of Justice is one of the principal organs of the United Nations. It would seem entirely consistent with our often pronounced policy for the Senate to take speedy action in order to ensure our full cooperation with the work of the Court at the earliest practicable date.

The Senate Foreign Relations Committee, in its report to the Senate on the United Nations Charter, expressed the following view:

"Unless we are prepared to take all steps which are necessary to effectuate our membership in the United Nations, we would be merely deceiving the hopes of the United States and of humanity in ratifying the Charter."

Mr. KENNEDY. Mr. President, 2 weeks ago, I expressed the opinion that the debate we were about to have would be the most important debate we would have this session. Today, we are about to take a vote that could be the most significant vote of this decade.

This vote is significant because it involves the lives of innocent people. Today, we will vote to save innocent lives, or we will vote to take innocent lives.

With this vote, we will also determine whether the United States of America, under the direction of President Reagan, will continue its march toward war in Central America. With this vote, we will decide whether U.S. funds should continue to be used for—and whether U.S. personnel should continue to be involved in—the indiscriminate mining of territorial waters in Nicaragua.

On March 29, just as our debate about Central America was beginning, we learned that U.S. personnel were being used on reconnaissance missions over El Salvador to assist the Salvadoran Army in combat with the guerrillas. And last Friday, after our debate had ended, we learned that U.S. personnel were being used to mine the harbors and territorial waters of Nicaragua. That same day, the Secretary of State quietly withdrew this Nation from the jurisdiction of the World Court with respect to disputes with Central American nations. But we did not know about that then, and we did not learn about that until yesterday.

President Reagan is moving us toward war. He has moved U.S. citizens up to the edge of combat, and he has involved U.S. citizens in the hostilities.

Last week, we debated whether the United States should continue to provide military assistance to the Contras in Nicaragua. Last week, on the floor of the Senate, we debated whether such assistance was in violation of international law. We were repeatedly assured that the Contras were not engaged in efforts to overthrow the Government of Nicaragua. We were repeatedly told that the Contras were not conducting a war to destroy the economic infrastructure of Nicaragua. If that were true, many Senators said, we would not be voting to support the Contras. And even the President of the United States got into the debate. He sent a letter in which he assured us that the United States did "not seek to destabilize or overthrow the government of Nicaragua; nor to impose or compel any particular form of govern-

ment there." But 2 days later, the United States of America withdrew from jurisdiction of the World Court.

The question before the Senate is a fundamental one: Will we take any responsibility at all—or will we abdicate completely to the executive branch? Will we condone terrorism and sabotage? Will we let the Reagan administration pursue a policy of sneaking war into Central America?

We have turned our backs on diplomacy.

We have turned our backs on international law.

Will the Senate watch passively as this administration sovietizes American foreign policy—as it adopts the standard that the end justifies the means—as it avoids our constitutional process and misleads the Congress?

The truth is confessed only when the administration is caught in the act. Such confession is not the kind of consultation which the Congress deserves or should demand. Such surprises are not the basis for bipartisanship.

Often in this debate, I have raised the question of our obligation to history. I raise it again. How will the Senators here explain someday that American sons are dying in an unwinnable war in Central America because we lacked courage to take a stand—or because we followed a political calculus which held that the administration should be permitted to twist slowly in the political wind? For what is being strangled rapidly now is the hope for a peaceful settlement.

The administration said we had no combat role in El Salvador. On March 29, we learned this was untrue—and that our forces were engaged in combat reconnaissance in that country.

The administration said that we were not seeking to destabilize the Government of Nicaragua; we only sought to interdict arms and supplies for the rebels in El Salvador. Now we have learned that this is untrue—that we have mined a port far from any point of arms shipments to El Salvador—and that our mines may blow up the ships of our NATO allies.

We know the evasions, the rationalizations, the fabrications, for we have heard them from this administration until they have become as tattered as they are untrue. We have no excuse for continued inaction.

Let us end escalation by surprise in Central America.

Let us at long last exercise the power we were elected to use—and let us say to this administration, "Enough is enough. You shall no longer move toward war before trying for peace."

● Mr. GOLDWATER. Mr. President, there has been a good deal of discussion in the press recently about remarks I allegedly made on the floor of the Senate last Wednesday night, April 5, 1984.

An article in the Wall Street Journal on the following day stated:

During Senate debate this week, the Intelligence Committee Chairman, Barry Goldwater, (R., Ariz.) surprised other Senators by openly referring to a document or paper indicating that the administration had directly authorized the mining. Mr. Goldwater's remarks were dropped from the published record made available yesterday, and while an aide to the Senator dismissed the matter, two other sources indicated that such a paper or staff memo did exist.

As well, an article in the New York Times this Monday stated:

Senator Barry Goldwater, the chairman of the Senate Intelligence Committee, inadvertently referred to the covert operation in floor debate. A Senator said Mr. Goldwater, an Arizona Republican, later had his remarks deleted from the Congressional Record.

There may have been other references to this matter as well.

Mr. President, in almost 30 years service in the U.S. Senate I have never had my remarks deleted from the RECORD. However, what we were confronted with last week was a rather unusual situation—in fact, it was a unique situation which I have never encountered before.

When the Senate Select Committee on Intelligence was established in the spring of 1976, Senate Resolution 400 gave the committee jurisdiction and authority to consider all legislation and other matters relating to authorizations for appropriations for the Central Intelligence Agency. Section 501 of the National Security Act of 1947, which was enacted as part of the Intelligence Authorization Act for fiscal year 1981, imposes an obligation upon the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities to keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of any department, agency, or entity of the United States, including any significant anticipated intelligence activity.

Section 662 of the Foreign Assistance Act of 1961, as amended by the Intelligence Authorization Act for fiscal year 1981, requires that each operation conducted by or on behalf of the Central Intelligence Agency in a foreign country, other than activities intened solely for obtaining necessary intelligence, shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947.

Mr. President, I am providing this background to make it clear to my colleagues that if the CIA was engaged in the mining of selected harbors in Nicaragua, this fact would of necessity have been briefed to me and to my committee or committee staff ahead of time. I say it would have been briefed of necessity, Mr. President, because this is the law. Now we may all debate whether this is a good law or a bad law or an indifferent law, but it is the law.

Now, last Wednesday night, during open debate on the floor of the Senate, a member of my committee came to me to ask if I had seen a document which indicated that the President ordered the mining of selected harbors in Nicaragua. I responded to him by saying that I had seen no such document and that I could not believe the President could have approved such a program since our committee had not been so briefed. Nor had I received any such briefing. After a few minutes' investigation, I learned that the document my member had referred to was simply an informal memorandum from a staff member to a Senator. It had been hastily pulled together in response to a couple of questions on the mining, and had no official standing as far as I was concerned. Although I conveyed these findings to my colleagues on the floor, I felt the matter deserved further inquiry, and my remarks were struck until such a time as further clarification could be obtained.

Mr. President, this afternoon, CIA Director Casey appeared before my committee in closed session to brief us on this issue. I learned to my deep regret that the President did approve this mining program, and that he approved it almost 2 months ago. Furthermore, I learned that in spite of the legal requirement that the intelligence family keep the members of our committee fully and currently informed on this sort of matter, we had not been so informed. By contrast, the House Permanent Select Committee on Intelligence had been fully briefed on this matter several weeks ago.

Now I have written Director Casey that this is no way to run a railroad. I am forced to apologize to the members of my committee because I did not know the facts on this case, and I apologize to all Members of the Senate for the same reason.

Mr. President, I have always felt strongly about the issue of leaks and of protecting the legitimate secrets of our Nation. So I will not comment further on this matter for the public record. However, I am prepared to provide any Member of the Senate with further details on this matter in private if they so desire. As well, Members of the Senate may wish to visit the offices of the Select Committee on Intelligence to review documents and transcripts on this matter, as well as to talk to our cleared staff. I consider this a matter of great importance, not just to the members of our committee, but to the Senate as a whole. And I am prepared to share whatever information we do have at this time. ●

MINING OF NICARAGUAN PORTS

Mr. SPECTER. Mr. President, I am voting in support of this amendment because I am concerned that the reported CIA involvement in the mining

of Nicaraguan ports is part of a broader U.S. covert effort that effectively supports the overthrow of the Government of Nicaragua in violation of the Congress legislative statement of 1982. Last week I supported an amendment to delete $21 million for the covert war against Nicaragua.

While the official purpose of U.S. covert aid to Nicaraguan Contras is the interdiction of the flow of arms from Nicaragua to El Salvador, the express goal of the Contras is the overthrow of the Sandinista government. While it may be argued that the mining of Nicaraguan ports will help to interdict the flow of arms between Nicaragua and El Salvador, the effect of the mining goes beyond this limited goal. Mines are blind to the cargo and flag of the vessels that trigger them, damaging commercial vessels as easily as those transporting Soviet and Cuban armaments. I am concerned that our actions in and around Nicaragua have dangerous repercussions beyond our stated goals, and that our present involvement is contrary to the stated intent of Congress. The Congress has not declared war against Nicaragua, yet the mining of another nation's harbors, like support for a group whose expressed objective is the overthrow of a government with which we have full diplomatic relations, may be interpreted as an act of war.

If it is the will of American people to wage, either directly or indirectly, a war against the Government of Nicaragua, let Congress debate and so declare its intent. If it is not the intent of the United States to overthrow the Government of Nicaragua, let us not engage in support of activities that may be interpreted as acts of war.

Mr. GLENN. Mr. President, I rise to state my strong support for Senator KENNEDY'S amendment—and to voice my strong opposition to administration policy. American participation in the mining of Nicaragua's harbors is more than a mere contravention of international law. It constitutes a policy that is strategically wrong, politically stupid, and morally outrageous. It is a policy that comes dangerously close to being an act of war—and I say it is time for Congress to bring it to a halt.

Let there be no mistake about what is at issue today. We are not talking about whether the United States should be involved in Central America—or about whether we should provide financial assistance to democratic elements in that region. I have long voiced my support for economic and military help to the governments of El Salvador and other central American countries—and so have a majority of my Senate colleagues. I have long voiced my concern over Nicaragua's seeming desire to export revolution in that region—and so have a majority of my Senate colleagues. Like you, I believe the United States has an obligation to encourage the voices of moderation and democracy in Central America—and to discourage the forces of tyranny and dictatorship.

But those goals are not at issue today. What is at issue is the Reagan administration's cavalier attitude toward basic principles of international law. What is at issue is the administration's continuing love affair with gunboat diplomacy and the politics of force. And what is at issue is the administration's blatant disregard for Congress role in the making of U.S. foreign policy.

Apparently, Mr. Reagan thinks that when it comes to the use of military force, the job of Congress is to keep its eyes closed, its checkbook open, and its mouth shut. He seems to think that it is all right to violate international law and to spit in the eyes of our allies. and he apparently expects Congress to dutifully go along and do only what we are told.

Well, I say enough is enough. I say the time has come for us to stand up and serve notice on this administration; to serve notice that we are not content to be silent partners in a misguided policy that ignores our national interests and betrays our national principles. Let us serve notice that when American lives are at stake, Congress can no longer be expected to first look the other way—and then to rally round this administration's failures.

By directing the CIA to participate in the mining of Nicaragua's harbors, the Reagan administration has embarrassed the Congress and the country. It has put us in the ridiculous position of laying mines that our Western European allies may help to remove. It has put us in the preposterous position of attempting to topple at worst or bully at best a government we recognize and with whom we have diplomatic relations. And it puts us in the hypocritical position of opposing state-sponsored terrorism when it is directed against our friends—and of condoning and even conducting it when it is directed against our real or imagined enemies.

Finally, Mr. President, let me say that I am deeply concerned about what this latest action by the administration may signal about its future foreign policy intentions. I need not remind you that the mining operation was carried out without the knowledge of the Senate Intelligence Committee. I need not remind you that virtually our entire foreign policy in Central America—from the use of training funds to build military infrastructure in Honduras to the not-so-secret war in Nicaragua to the mining of that country's harbors—has been conducted outside the normal policymaking framework of this Nation. And I am sure I need not remind you that just this past weekend, unidentified White House advisers were darkly warning about the probable use of U.S. combat troops in Central America—although not until 1985 and not until this year's election has safely passed.

Mr. President, I believe there is a pattern here—and I believe we must show the administration that we find it to be completely unacceptable. Again, I am not calling for a retreat from our responsibilities in Central America. Nor am I suggesting that there are no circumstances under which the use of force in that region would be acceptable. But I am suggesting that no U.S. foreign policy—in that region or any other—can be successful unless it has the support of Congress and the American people. I am suggesting that it is time we call a halt to the administration's high-handed attitude and underhanded tactics. And I am suggesting that it is time Congress asserted its rightful place in the making of American foreign policy—and stopped the wrongful mining of Nicaraguan harbors. I ask my colleagues to give this amendment their wholehearted and enthusiastic support.

MINING NICARAGUAN HARBORS

Mr. HUDDLESTON. Mr. President, the disclosure of the mining of Nicaraguan harbors by the CIA has raised the most serious questions about U.S policy and the effectiveness of the intelligence oversight process. It is very disturbing that the Select Committee on Intelligence was not fully and properly informed of this matter, which was so clearly and directly relevant to our consideration of the recent supplemental appropriations bill to provide additional funds for CIA operations in Nicaragua.

Had I been aware of the mining activities, I would have voted against any funds for that purpose. That knowledge would also have given cause for me to reconsider my support of the supplemental appropriation for the entire operation.

The records of the Select Committee have been reviewed, and we have found only one reference to mining activities. It did not convey the nature, extent, or seriousness of what has been going on.

It is very important for all of us to understand why the mining of Nicaraguan harbors is so objectionable. The fundamental problem is that it is indiscriminate, rather than directed against specific targets. I could support action to interdict a particular vessel known to be carrying arms to Nicaragua that could reasonably be expected to go to guerrillas in El Salvador. That action could be justified as necessary to protect El Salvador from outside military intervention.

However, the mining operations that have been carried out are far different. They pose a danger to ships from entirely innocent countries, carrying nonmilitary cargo. Our closest allies, such as Britain and France, have had their ships and the lives of their citizens placed in jeopardy. Moreover, innocent fishing boats manned entirely by civilians earning their livelihood are placed in danger.

It makes no difference if the mines are constructed so as not to sink the ships. They still do damage to property and endanger human lives.

Over the past year I have tried to work with my colleagues on the Select Committee to insure that the administration's operations against Nicaragua would be subject to the closest possible oversight scrutiny and review. Unfortunately, the oversight process has not worked in this case to keep the committee fully and currently informed of all significant anticipated intelligence activities, as contemplated by the congressional oversight provisions enacted in 1980.

We need to learn from this experience. The risk of the type of paramilitary operations undertaken against Nicaragua appears to be that they inevitably get out of control. The Select Committee has attempted, in a bipartisan way, to prevent this from happening. We will continue to do all that we can to insure that the administration's use of the CIA's sensitive capabilities is held accountable through congressional oversight to the principles and interests of the American people.

● Mr. BOREN. Mr. President, I am convinced that the vast majority of the American people could be described as political moderates. They tend to distrust both the extremism of the right and of the left. They do not want government to be so active that it stifles individual initiative but they do not want it to be so inactive that it fails either to protect equal opportunity of all citizens or to provide for those who are unable to help themselves.

In foreign policy they are not naive isolationists who would concede our vital interests in the world to our adversaries. Neither are they reckless interventionists who would squander our power carelessly in situations which we cannot win or which needlessly endanger the lives of our young people.

Our country has been well served by the commonsense and sound moderate judgment of our people. It has generally been reflected in the ability of our political leaders to form a consensus around which most Americans could rally both in terms of domestic and foreign policy.

For moderates, however, these are difficult and frustrating times. The process for picking our national leaders seems to favor those who tend to the polar positions instead of those closer to the reasonable mainstream of the total population.

Our sense of community has been fragmenting. More energy is spent in appealing to narrow single-interest groups than in uniting all Americans for the common good. Too much time is spent in scoring partisan political points than in forming nonpartisan coalitions to solve problems.

The moderate majority is often left to select the lesser of evils among extreme choices. The current situation is an example of just that kind of dilemma.

As my colleagues in the Senate know, I earnestly hope for a bipartisan consensus on foreign policy. To me, politics ideally should stop at the water's edge. Each of the 535 Members of Congress cannot be Secretary of State or Commander in Chief. If Congress secondguesses every decision by a President, we will send an uncertain signal to the rest of the world.

Others around the world have come to wonder about the ability of the President to speak for the United States. Even our allies publically question our ability to live up to our commitments. Our frequent changes of direction have left our credibility in doubt. Our family fights have been watched by the entire world.

To be perfectly honest, neither the President nor the Congress, Democrats nor Republicans, can be very proud of the record of the last decade when it comes to healing the wounds of the sixties and building a spirit of bipartisanship in foreign policy. The President was not fair in blaming Congress for the failure of the administration's policy in Lebanon. It was a flawed policy in the beginning. Injecting a small number of American troops into a long, bitter, religious war among several factions would not have succeeded even if Congress had voted unanimously to support it.

On the other hand, there were those in Congress who were too quick to criticize the President when he took decisive and appropriate action to use our power to protect our interests in Grenada. The objective was limited and the chances for success were excellent.

Some have used the Vietnam experience to argue for complete isolationism. They seem prepared to criticize any possible use of American power, under any circumstances or in any part of the world. Such a policy would render the United States impotent in the eyes of the world. It would encourage our adversaries to test us and would increase the risk of conflicts.

As I said earlier, I believe that the vast majority of the American people reject this naive isolationsim which is in short a policy of international capitulation.

I cannot believe that the American people want us to simply give up Central America and allow regional instability in our own backyard to move ever closer to our 1,800-mile frontier with Mexico.

On the other hand, if we reject isolationism, we must not embrace reckless interventionism.

I have tried to follow a moderate bipartisan course. Last week, I voted consistently against amendments which I felt would unduly tie the hands of the President in responding to emergencies in Central America. I voted against amendments which I felt would set unwise precedents altering the President's constitutional powers as Commander in Chief.

I voted to support administration efforts in El Salvador to help the people there help themselves. As an observer to recent elections in that country, I am convinced that they were basically fair and honest. I have no doubt that the vast majority of the people there want the ballot and not the bullet to determine their future. Their democratic process deserves our encouragement and support.

While the outcome is far from certain, it would appear that there is at least a chance that El Salvador may be winnable. To me, the administration seems correct in wanting to give our best effort to attempt to stabilize the situation there.

In Nicaragua, the situation is less clear. The legacy of the past dictatorial government has clearly created some significant support for the current government. While it has been a close question in my mind, I voted to continue our efforts in Nicaragua aimed at stopping the flow of arms to hostile forces in other nations.

I have clearly done my best to build bipartisan support for a reasonable policy in Central America. We must test every aspect of that policy by weighing the moral issues involved and by carefully balancing the risks of the policy against the chance for success. To me it is clearly moral and in our interest to attempt to support the democratic process in El Salvador.

It is at least possible to argue that it is proper for us to interdict by practical means the flow of aggressive arms from Nicaragua.

The indiscriminate mining of Nicaraguan harbors in my opinion, however, clearly fails the test. It is subject to attack on moral grounds. It clearly runs grave risks because of the danger it can cause to ships of many nations, some of whom are allied to us. It could cause a major international confrontation if it resulted in loss of life of foreign nationals. While this tactic runs grave risks, they are certainly not balanced by any significant gain which is achievable by using it.

I deeply regret that this action has been taken. By resorting to careless use of our resources, the administration has at least in the short run only strengthened the position of those who would criticize what I believe are legitimate uses of our power in other areas in Central America.

My conscience and best judgment lead me to support the pending sense of the Senate amendment which condemns the mining of Nicaraguan harbors.

In reaching this decision, it should be clear that I do not embrace any policy of retreat or isolationism in Central America. Perhaps this current state of events will make it absolutely clear to both Congress and the President that we should urgently get on

with the task of developing a bipartisan policy.

Let us hope that America's moderate majority will make itself heard. It is time for both Congress and the President to call a moratorium on the escalating rhetoric. We must forget past differences and sit down together. I hope that the President and congressional leaders of both parties will sit down together and in candor and good faith resolve their differences. Voluntarily agreeing to accept the congressional view that the mining of the harbor should be stopped would be a good first step on the part of the President. If he should take that step, let us hope that Congress would also be prepared to respond, positively.●

U.S. INVOLVEMENT OF NICARAGUAN TERRITORIAL WATERS

Mr. JEPSEN. Mr. President, last week, the Senate voted on several aspects of military aid to Central America in the context of the urgent supplemental appropriations bill. Among the areas that were extensively debated, was the question of so-called covert aid to the Contras in Nicaragua. As the record shows, I have supported funding the amounts requested by the administration for these activities.

However, my support has been contingent on several principles involved with our aid to those groups within Nicaragua who are fighting to push Nicaragua back toward the path of a democratic and free society.

These principles included:

That the main goal of the funding was the interdiction of military supplies flowing from Nicaragua to the guerrillas in El Salvador.

That the aid be used to help only Nicaraguan nationals in their struggle against the Sandinista government.

That the aid not compromise the commitment of the United States to bringing about the rule of law in international relations.

Over the weekend, I began to read stories in the press of much more direct U.S. involvement in the contra operations that may, in my view, jeopardize everything that we have been attempting to accomplish there. I speak specifically of the reports of direct CIA involvement in the efforts to mine the territorial waters off Nicaragua.

When I read such reports, I am increasingly skeptical of the ability of some policymakers in the administration to develop successful strategies to deal with the growing number of challenges to the United States in the world.

Now I number myself in that group who want to put maximum pressure on the Sandinistas to fulfill the promises that they made to the OAS and to stop shipping military arms and ammunition to the guerrillas in El Salvador. Cuban and Nicaraguan interference in the internal affairs of the duly-elected Government in El Salvador is the major stumbling block to peaceful resolution of the many conflicts in that country. Seen in the light of what we are trying to do in Central America, this most recent operation off of Nicaragua is plain dumb.

If viewed strictly in the light of narrow logistical and operational considerations, mining the coastal waters off Nicaragua may seem attractive as one way to put additional pressure on the Sandinistas. But if political and social factors are taken into consideration, the plan should have been rejected. To consider that political and social concerns would be bypassed by keeping such a large-scale operation "covert" shows an ignorance of history and an inordinate dose of wishful thinking.

If there is any relationship between reality and what I have been reading in the press, and I will be first to admit that the relationship is not always there, the U.S. involvement in the mining of Nicaraguan coastal waters violates many of the basic principles on which "covert operations" have been supported in Congress.

The best way to view the mining operation is to set up a balance sheet of costs and benefits. The benefits that the Contra mining could be expected to accrue are the following:

Mining the waters of Nicaragua would seriously damage the ability of Nicaragua to export her recently harvested commodities that are virtually the sole resource of foreign exchange. The result of this could be to stop the arms shipments to El Salvador and to fulfill the promises they made to the OAS.

Slowing the importation of oil could have the long-term effect of hampering the Sandinistas ability to carry out military operations against the Contras.

It appears that mining is being conducted in such a way as to stop short of sinking large ships, but merely serves as a deterrent to ships heading for Nicaraguan ports.

Against these so-called plusses a considerably greater number of minuses can be set.

Because of the sophisticated nature of the operation, U.S. citizens and non-Nicaraguan nationals hired by the CIA appear to be directly involved. This is an essential change in our role in Nicaragua.

Our open society and the size of the operation has virtually guaranteed a leak to the press.

Participation in the act of mining the territorial waters of another country is considered an "act of war" in the international community.

Damaging third party shipping raises serious questions about the U.S. commitment to freedom of the seas.

Once again the star of the Sandinistas is rising in Western Europe as world sympathy is aroused by our actions. There are now even discussions among our allies about helping to clear the mines from Nicaraguan waters.

This latest action has given the Nicaraguans the very limited amount of credibility they needed to bring a case against the United States to the World Court, the same body that we appealed to to obtain the release of American hostages in Teheran.

As a result, we have had to formally declare that we will no longer accept the jurisdiciton of the World Court in matters involving the United States.

We have given the Nicaraguan Government an open opportunity to blame the United States for an economic failure that is in reality the fault of mismanagement by the Sandinistas.

The long-term effects of our involvement in the mining of Nicaraguan waters will be hard to predict, but we should terminate a policy which has and will continue to undermine our credibility in the international arena.

Mr. DURENBERGER. Mr. President, this is a most painful of occasions. For at least 5 years, many of us have been trying to help our executive branch forge a workable policy on Central America. Our progress has been difficult and slow. Now, in the last few years, we may be witnessing the unraveling of what little policy there was.

Faced with this crisis—and for once there is a crisis—the Senate has a responsibility. Our role must be to rescue American policy from its own excesses. We must not be the wrecking crew, but the salvage team.

The mining of Nicaraguan harbors illustrates the complexity of any activist foreign policy. It is one thing to decide on the broad outlines of such a policy—the one will engage in covert action in Nicaragua, for example, or that one will attempt to interdict arms flows into El Salvador. It is quite another thing, however, to implement that decision successfully.

I can understand why the executive branch would want to mine Nicaraguan harbors. Despite the doubts of my colleague, the senior Senator from Massachusetts, one might well feel that mining harbors was one way to stem the flow of arms from Cuba to Nicaragua, and from there into El Salvador. One might also hope that economic pressure on the Nicaraguan Government would lead that government to consider making its peace with its neighbors, with the United States, and especially with its own people, so many of whom fought for Nicaragua in 1979 and are now fighting for the Contras.

Presidents and executive branches seem less inclined to consider the downside of their policies. In their quest for activist solutions, they are hardly eager to ponder whether a tactic will actually do more harm than good.

The difficulty of combining a covert action policy with reasonable tactics has been present from the very start. When we first heard about this program, many of us wondered whether

covert action would—either by design or by accident—become an effort to overthrow the Government of Nicaragua. That risk was inherent in a policy of support for the Contras, as my able colleague, the senior Senator from Maine, so eloquently explained last night.

As a result of these concerns, the Boland amendment was passed in 1982. Over the ensuing months, many people became convinced that the overthrow of the Sandinistas was, indeed, our policy.

I did not, and do not, share that concern. We on the Intelligence Committee have had many briefings on the covert action program. We have sent staff members to get more material. And both Members and staff have made trips to the region. On the basis of all that material, I am convinced that the executive branch—and, in particular, the CIA—are faithfully obeying the Boland amendment.

I am also convinced, Mr. President, that the policies and actions of the Government of Nicaragua fully warrant a strong response. As I noted last week, even Democratic and left-of-center elements in Central America fear the aggressive policies of Nicaragua. They see the Sandinistas not as reformers, or even as revolutionaries, but rather as the prime supporters of terrorist and guerrilla violence in the region.

We must stand up to Nicaragua, and our objectives are surely honorable: An end to Sandinista support for foreign terrorism and guerrillas; a slicing down of Nicaragua's frightening military buildup; a fond farewell to Soviet and Cuban advisers in Central America; and a return to the pluralist system that the Sandinistas originally promised to the people of Nicaragua.

What is less certain, in this complex enterprise, is whether the implementation of our covert action policy has been rational or effective. Last year, we were faced with reports of Contras slitting the throats of teachers and other civilians, and the Contras seemed more concerned with showing the press what the Nicaraguan mountains were like than with undertaking actions that would rally local support or interdict arms flows.

So last year the Intelligence Committee told the President to rethink this program and to draft a new, more coherent finding that would set forth objectives and approaches to achieving those objectives. This was done last fall, and I think it was done well. The last year has seen less Contra grandstanding, apparently less reliance upon former Somocistas, and even some operations against targets that seem to be part of the Nicaraguan support chain for guerrillas in El Salvador.

On two points, however, I am sorely disappointed. One is the continuing gap between policies to pressure Nicaragua and policies to resolve the conflict. The other is the most recent evolution in our policy.

The gap between activist policies to pressure a country and efforts to settle disputes is an old one. What is sad is how little we learn from the past. For example, surely history teaches us that the chances for real negotiation are often fleeting, and that such chances are not to be dismissed. But what happened when the United States invaded Grenada? There was an initial period in which Fidel Castro, rightly frightened by this successful U.S. activism, counseled caution to his proteges in Nicaragua. The Sandinistas, in turn, showed true concern over U.S. intentions and gave hints of flexibility.

Did we take advantage of that brief opening? Perhaps I blinked, Mr. President, and did not see it. What I did see was a policy that kept up the pressure with military maneuvers and construction in Honduras, but did not combine that pressure with active efforts to determine what sort of accommodation the Sandinistas might be willing to make with their neighbors, with us, or with their own people.

Now it is harder. Now Nicaragua is moving toward elections—not truly free elections, but close enough to fool much of the world; not elections that give their people a real chance to reject Marxism-Leninism, but timed just before our own elections so that we will be too preoccupied to deal effectively with this challenge.

Now we are in the amazing fix of having some Contra groups offering to lay down their arms if a truly free election could be guaranteed, even though there are important other objectives to be gained as well. Now we have the most respected Members of the Democratic opposition to the Sandinistas refusing to participate in the elections, even though most of the world is likely to view those elections as valid. Now we see the Democratic forces in Nicaragua weak and divided, even though the daily flow of Nicaraguans into neighboring lands and Contra camps suggests that the people of Nicaragua might well reject their current masters in a free election.

And what do we see in the mining of Nicaraguan harbors? Does anybody believe, Mr. President, that the executive branch gave a thought to allied reaction when British and Dutch ships were struck by mines? Does anybody believe that the executive branch considered, before it went ahead, that Nicaragua might go to the U.N. Security Council and the World Court to gain a propaganda victory? Is there any sign that the executive branch ever considers how its own credibility with Congress is damaged when it does something like this and does not even tell the committee that is defending its policy on the floor of the Senate?

Most importantly, Mr. President, one wonders whether Presidents and their aides appreciate how each inept exercise of power, of which this is certainly one, erodes their credibility with the American people. This is not the first executive branch to squander that precious coin. But when, one wonders, when will they learn?

It was Thomas Jefferson who required us all to observe "a decent respect to the opinions of mankind." Now that was not a call for inaction. Rather, it was a call for coherent policy, cogently presented. But as the senior Senator from New York might well have said in our colloquy last week, a confusing newspaper interview will not measure up to the Declaration of Independence. And the Kissinger report, which is the closest thing we have to a coherent statement of Central America policy, is all but ignored by policymakers who mistakenly see activism as only a short-term thing.

Mr. President, I have given conditional support for the provision of funds for the Nicaragua covert action program, despite my misgivings. Because I see good reasons to keep some pressure on the Government of Nicaragua to change its policies, I voted with the executive branch to defeat four amendments on Nicaragua last week, as well as one on Honduras and eight on El Salvador. But it makes no sense to support a self-defeating tactic, and that is what the mining of Nicaraguan harbors has become.

Our unseemly flight from World Court jurisdiction is just one sign, but perhaps the most telling sign, that the mining tactic is a colossal loser. We all know that other countries break international norms. Nicaragua's indifference to the norm of leaving one's neighbors alone is the reason that we began this covert action in the first place. But international law exists to put limits on our behavior, even when we are in conflict with others, in order to preserve certain standards that benefit us all.

And we, Mr. President, are the ones who almost always benefit from international law. The World Court is not a pack of guerrillas, or even a conclave of liberation theologists. It is the guardian of international standards and tradition. It stands, very largely, for what we believe in. So when the United States runs away from the court, we run away from those who would hold us to our own standards of conduct.

Such policy is foolishness, Mr. President, short-sighted foolishness. It gives the appearance of arrogance, even though I suspect that it is much more the product of haste and desperation. And the great pity is that it is unnecessary, a feckless aberration to shore up an unwise tactic that serves a policy that—ironically—is still worth saving.

What shall we do in such a situation? What shall we save, and how?

First, Mr. President, let us clearly state that this is not the fault of the CIA. The Central Intelligence Agency has been the faithful servant of our

policymakers. The CIA has implemented its covert action very carefully, with due attention to the Boland amendment even before it was passed. They may make mistakes from time to time; they may have yet to learn how to keep the Intelligence Committee up to date on what is happening. But the CIA is not responsible for policymakers who will not coordinate covert action with other elements of policy. The CIA is not the agency that is supposed to seize the opportunities that overt or covert actions provide, to seek a resolution of conflict. If we can bring about a more rational policy, the CIA will serve that policy as well.

Second, Mr. President, and here I speak to my colleagues who join me in concern over the mining issue, let us not jettison a whole policy just because one aspect is ill-conceived. If we end the mining—and I think that we would be well advised to do just that—there will still be extremely troubling arms flows into Nicaragua and El Salvador. If we end the covert action—and I think it would be wrong to do that at this time—there will still be Sandinista interference in its neighbors' affairs, while Nicaragua will still lack the freedoms that the Sandinistas promised nearly 5 years ago.

Let us tell the executive branch that Congress would end this self-defeating tactic of mining harbors, especially when the mines affect our friends as much as our foes, threatening civilian cargoes as much as military ones. Let us tell the executive branch that Congress would not run from World Court jurisdiction, like some criminal jumping bail. Let us encourage the executive branch, instead, to make the best case we can in both the World Court and the court of world opinion, for there is quite a case to be made that Nicaragua's support for guerrillas and terrorists warrants countermeasures.

Finally, Mr. President, let us call upon the President and the executive branch—loudly, if necessary—to get our Central America policy in order. Let us call for a true coordination of means and objectives, for a policy that will recognize the need for flexibility in implementation and will not merely push forward, willy-nilly, when the possible adverse consequences of our facts are so great. This President has shown great sophistication on so many issues, from social security to working out budget compromises, that I am sure he can bring that same skill to our Central America policy. I truly look forward to that great day.

Mr. MITCHELL. Mr. President, the simple and plainly visible truth about our covert assistance to the Nicaraguan Contras is that the chief use to which it is being put—an attempt to overthrow the Government of Nicaragua—violates U.S. and international law. That is a clear and undisputable fact, evident to anyone who looks at the record.

What the Reagan administration is doing in Nicaragua is discrediting the United States in the eyes of all those who we ask to believe in respect for the law.

It is undermining our efforts to call the attention of the world and of our own people to the fact of international terrorism, and to condemn and combat it.

In short, our covert assistance to the Contras is destroying our credibility. It is not difficult to see why.

This program, as it is being operated, violates article 2(4) of the Charter of the United Nations, a multilateral treaty ratified by the Senate. This treaty prohibits the threat or use of force against the territorial integrity or independence of any state.

It also violates article 15 of the Charter of the Organization of American States, of which we and Nicaragua are members. That treaty was also ratified by this body. Article 15 bans direct or indirect intervention in the internal affairs of any member state.

As established by our Constitution, all treaties made under the authority of the United States are the law of our land. A violation of such a treaty—such as the U.N. and OAS charters—is a violation of U.S. law. Our Government has violated both of those treaties and has broken our own law.

Moreover, in 1982 Congress enacted a law prohibiting the use of funds by the Central Intelligence Agency or the Department of Defense "to furnish military equipment, military training, or advice, or other support for military activities to any group or individual not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras."

That is the law of this country. Yet we are providing arms and money, training and guidance to the Nicaraguan Contras whose publicly professed goal is to overthrow the Government of Nicaragua.

In the past few weeks President Reagan has made such ambigious and conflicting statements on our objectives in Nicaragua that the majority leader last week was impelled, under the obvious pressure of then-pending votes on this matter, to get the President's views in writing.

Despite this last-minute attempt at clarification, what is and remains clear is that the administration's actions in Nicaragua violate American law.

The direct participation of the CIA, in mining several harbors of Nicaragua, publicly disclosed late last week, aggrevates the situation and makes the U.S. action even more plainly illegal. Mining a harbor is an act of war and a violation of international law.

Let us not forget that Iran, in recent months, has threatened to shut off the Persian Gulf by mining the Straits of Hormuz and its approaches. Repeatedly, President Reagan has expressed his view that such action by Iran involving these international waters would violate international law and could be considered an act of war. Moreover, the President has emphasized that he would not rule out the use of U.S. military force to respond to such an eventuality.

How can the United States have this policy with respect to Iran's threats while we act in a similar way by mining Nicaragua's waters?

To make an already bad situation even worse, the administration now says that it will ignore the World Court's jurisdiction over matters referred to it involving U.S. actions in the region.

Although it may be technically legal for the United States not to accept World Court jurisdiction in matters involving Central America, such an action—taken in response to information that Nicaragua is about to bring charges against the United States—makes a mockery of the rule of law.

However, there is a constraint against the administration's action regarding World Court jurisdiction, a constraint it has violated. In August 1946, the United States accepted compulsory jurisdiction of the Court. In a report to the 79th Congress, the Senate Committee on Foreign Relations unanimously said:

> The resolution provides that the declaration should remain in force for a period of five years and thereafter until six months following notice of termination. The declaration might, therefore, remain in force indefinitely.

The report then continued—and this is the key sentence:

> The provision for six months' notice of termination after the five-year period has the effect of a renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding.

It is clear from this report that in accepting the World Court's jurisdiction, we relinquished any right to withdraw our acceptance as a result of the bringing of a particular legal proceeding against us—as Nicaragua said it will do on the harbor mining issue. The administration's announced intention where the Court is concerned thus directly disregards and transgresses a fundamental commitment embodied in the Senate's ratification resolution and in our acceptance of the Court's authority.

All of this amounts to cynicism beyond any we have seen to date by our Government in its actions and statements in Central America.

What are we to make of this flouting of law, of the intent of the Congress, of the will of the people of this country, and of common sense?

What are we to believe when our Government, stung by the death of hundreds of U.S. marines in the Middle East at the hands of terrorists, nonetheless continues its support of terrorists engaged in killing, in industrial and economic sabotage, and in the mining of the ports in Nicaragua? Have we become a nation to whom the ends justify any and all means?

Mr. President, there are many who, faced with the facts and with the contradictions between the words and the deeds of our Government in Central America, are now coming forward to question, to criticize and to doubt. I call on them to demonstrate that there is no disparity between their own words and deeds. The answer to the questions I have asked here today, in other words, lies in a vote to support their amendment to stop the unwise, unnecessary, and illegal mining of Nicaraguan ports.

Mr. DENTON. Mr. President, I fully understand the concern that many of my colleagues have about the issue that has been raised by the Senator from Massachusetts. At the same time, however, I am grievously disturbed by the tendency of many of my colleagues to rush to judgment on this issue, as on many other contentious issues of foreign and defense policy. One thing that life teaches, both personal life and public life, is that decisions made hastily and in heat are bad decisions more often than not.

I have spoken on this floor on many occasions about the evils that ensue when we try to conduct our foreign policy with 536 Secretaries of State, when one is sufficient to the challenge. It is all the more the case because that one is probably better informed and advised about the details of our foreign relations than are all the 535 others taken together.

We forget, in our debates in this body, that we derive our position from a constitutional system that has served our country well for nearly 200 years. It is a system that gives the Senate of the United States a particular position of power, Mr. President, but also one of responsibility, Mr. President, of responsibility.

The Senate has power and responsibility to oversee the conduct of foreign affairs, to provide advice and consent, but the Constitution confers upon the President the authority and the responsibility to conduct the foreign relations of our country. Indeed it mandates that he do so. We in the Senate tread upon dangerous, dangerous ground when we interfere with the authority and the responsibility of the President. When we decide to do, and it should be rarely, it should be cooly, after careful study, consideration, and examination of all the information that we can obtain.

The amendment before us has none of the hallmarks of such a process. It can do nothing other than to serve as an outlet for emotion and to send a message. Unfortunately, it would send a message to the wrong people.

I hope that we have the good sense, Mr. President, to realize that the message will be conveyed primarily to those who seek to exploit our division and our distress, that it will cheer our enemies and dishearten our friends, that it will confuse and dismay the American people, that it will promote no good but that it will precipitate great harm. For that reason alone, although there are other reasons, we should defeat it.

Mr. President, I understand the seriousness of the issue. I am willing, if that is the will of the body, to engage in factfinding, in analysis, in debate, and in legislation about our policy in Central America. If we are to do that, however, let us do it properly, guided not by our emotions or by the partisan attractions of an election year but by our responsibilities as Senators and as elected leaders of our country. I urge my colleagues on both sides of the aisle, colleagues whom I know are thoughtful, serious, and responsible Senators, to lay aside the temptation to vent emotion, and to defeat the amendment before us.

Thank you, Mr. President.

Mr. LEVIN. Mr. President, I am deeply worried about our country's actions and policies regarding Nicaragua. The reports that we are responsible for the mining of Nicaraguan harbors and territorial waters cause me deep concern. These actions are shortsighted and ultimately self-defeating.

We have responsibilities in Central America. We have a responsibility to help those countries that desire and request our help. We have a responsibility to aid El Salvador to achieve stability and conduct meaningful free elections. But, our reported actions toward Nicaragua are not a fulfillment of our responsibility, but rather an abrogation of that responsibility.

Our responsibility as a nation and as a member of the world community is to adhere to the rule of law. Participating in the mining of the waters of a nation with which we are not at war is not adhering to the rule of law.

Our Nation can no longer hide behind the fiction that we are simply funding people who may have a different ultimate goal than we do. We can no longer hide behind the fiction that we are not actively responsible for actions that are judged by many to be an act tantamount to war.

Our responsibility is to meet the legitimate needs of our friends in the region. Mining the harbors and territorial waters of a nation with which we have full diplomatic relations is not the legitimate way to do it. Indeed, it is ultimately counterproductive.

Such actions confirm the worst fears of our friends in the region and in the rest of the world. Not only do they violate our best traditions and aspirations, they ignore history.

This heavy-handed behavior will not help us achieve our goal of a stable region free of Soviet influence. It will only gradually reduce our own influence. We should step up to our responsibility and adopt this amendment.

UNDERMINING UNITED STATES-LATIN AMERICAN FRIENDSHIP

● Mr. MELCHER. Mr. President, the failure of the United States to notify Mexico, Venezuela, Colombia, and other Central and South American countries that we were providing the mines and assisting in laying them in Nicaraguan harbors will especially hurt our relations with our friends and trading partners of this hemisphere. There should be a special responsibility to them stemming from the Monroe Doctrine, the Rio Treaty, and the Organization of American States. This action of participating in mining harbors in a country where their ships might be damaged is another blow to common neighborliness that has brought U.S. policies toward Latin American countries in ill repute as a callous disregard of their vital interests.

The stated policy of the Contadora groups—Mexico, Venezuela, Colombia, and Panama—has been to dissuade the United States from military action in Central America. Other Latin American countries have quietly expressed similar views. This comes at a time when most Latin American countries are hard pressed economically and are attempting to work out conditions for loans through the International Monetary Fund and private banks, many of which are American. It takes courage for them to voice objections to administration policies.

To have ships from their country damaged by the mines the United States made and assisted in laying in Nicaraguan harbors is adding insult to injury. This is a serious act of war. In my judgement it is wrong.

Not to notify friends and allies is a serious blunder admitted even by many who approve the action.

Whatever else can be said—and there is a great deal more that will be said—the sum and substance of the blunder is that the administration cannot defend its action. Unless the President wants to ask for a declaration of war, the best thing he can do now is to order the CIA to hire the removal of each and everyone of the mines.

The President can give the order to the CIA overtly or covertly. The friends we have in this hemisphere will be relieved.●

ORDER OF BUSINESS

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, the minority leader needs time to conduct his clearing process. In order to do that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

the PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President——

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. Mr. President, our people have been contacted. We find no objection.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, as the majority leader stated, the second provision dealing with court jurisdiction, as a result of this proposal, will be vitiated. I just wanted to mention that although that is the effect of the majority leader's amendment, and I understand that and will accede to it, I also want to indicate that, after the rollcall, I intend to send to the desk a resolution (S.J. Res. 271) incorporating that provision and ask for it just as appropriate reference. It will not be incorporated in this legislation, but I just want to indicate that we want to have an opportunity to vote on that issue.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank the Chair. I ask for the yeas and nays.

The PRESIDING OFFICER. Will the majority leader defer to permit the Chair to place the pending business before the Senate?

Mr. BAKER. Yes, Mr. President.

MISCELLANEOUS TARIFF TRADE AND CUSTOMS MATTERS

FEDERAL BOAT SAFETY ACT AMENDMENT

The PRESIDING OFFICER. The clerk will state the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 2163) to amend the Federal Boat Safety Act and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 2905, AS MODIFIED—DIVISION I

At the appropriate place in the Dole amendment, add the following new section:

"SEC. . It is the sense of the Congress that—

"(2) No funds heretofore or hereafter appropriated in any Act of Congress shall be obligated or expended for the purpose of planning, directing, executing, or supporting the mining of the ports or territorial waters of Nicaragua.

Mr. BAKER. Mr. President, I ask for the yeas and nays on the first division of the Kennedy amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BAKER. Mr. President, before we vote, let me ask this question: Under the order previously entered, the only question pending is the first division. The second division, by the order, has been withdrawn. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the first division of the amendment of the Senator from Massachusetts. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Mississippi (Mr. COCHRAN) and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I further announce that, if present and voting, the Senator from Maryland (Mr. MATHIAS), would vote "yea".

Mr. CRANSTON. I announce that the Senator from Texas (Mr. BENTSEN) and the Senator from Colorado (Mr. HART) are necessarily absent.

The PRESIDING OFFICER (Mr. JEPSEN). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 84, nays 12, as follows:

[Rollcall Vote No. 59 Leg.]

YEAS—84

Abdnor	Garn	Moynihan
Andrews	Glenn	Murkowski
Armstrong	Gorton	Nickles
Baker	Grassley	Nunn
Baucus	Hatfield	Packwood
Biden	Hawkins	Pell
Bingaman	Heflin	Percy
Boren	Heinz	Pressler
Boschwitz	Hollings	Proxmire
Bradley	Huddleston	Pryor
Bumpers	Humphrey	Quayle
Burdick	Inouye	Randolph
Byrd	Jepsen	Riegle
Chafee	Johnston	Roth
Chiles	Kassebaum	Rudman
Cohen	Kasten	Sarbanes
Cranston	Kennedy	Sasser
D'Amato	Lautenberg	Simpson
Danforth	Laxalt	Specter
DeConcini	Leahy	Stafford
Dixon	Levin	Stennis
Dodd	Lugar	Stevens
Domenici	Matsunaga	Trible
Durenberger	Mattingly	Tsongas
Eagleton	McClure	Warner
Evans	Melcher	Weicker
Exon	Metzenbaum	Wilson
Ford	Mitchell	Zorinsky

NAYS—12

Denton	Hatch	Symms
Dole	Hecht	Thurmond
East	Helms	Tower
Goldwater	Long	Wallop

NOT VOTING—4

Bentsen	Hart
Cochran	Mathias

So division I of Mr. KENNEDY's amendment (No. 2905), as modified, was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE SCHEDULE

Mr. BYRD. Mr. President, I have had several inquiries from my side, from my colleagues, Senators who wish to know what the program will be for the remainder of today, for tomorrow, and the remainder of the week.

So I ask the majority leader if he is in a position to enlighten us.

Mr. BAKER. Mr. President, I thank the minority leader.

Mr. President, the chairman of the Finance Committee is here, and as strange as it may seem, we are now back on the tax bill.

If the minority leader will yield for that purpose, I inquire of the chairman of the Finance Committee how long he plans to work tonight and what he sees in prospect for the future consideration of this measure.

Mr. BYRD. Mr. President, I so yield.

Mr. DOLE. Mr. President, I do not see much purpose in going beyond midnight tonight. We can put in a full day tomorrow, Thursday, and Friday.

I say this in all seriousness I said it at the Republican policy luncheon. I think a lot of the amendments that Members may have we might be able to work out.

So unless they just wish to have a surprise party, if they will let us know what they have in mind, we will be glad to take a look at them.

There are not that many amendments. I know there will be some.

The Democrats may have a substitute or a package. We may have one on this side.

But beyond that, I know the distinguished Senator from Ohio (Mr. METZENBAUM) has a number of amendments.

But I really wish to work awhile tonight and see if we cannot dispose of a lot of them and obviously make some pretty good time. We may not have to go beyond midnight.

Mr. BAKER. Mr. President, I thank the chairman of the committee.

If the minority leader will continue to yield to me, I guess what that means is we are going to be here awhile tonight and tomorrow on this bill as well.

Let me state my objective.

The leadership on this side wishes to finish the amendment which is the tax bill before we go out for the Easter recess, and in all fairness I doubt we can get any further than that and maybe cannot get that far.

But I have asked for the House of Representatives to send us an adjournment resolution that will permit the adjournment of the Senate from either Thursday or Friday, depending on when we finish our work, and the objective is to try to finish the tax bill portion of the boat bill before we go out.

In answer to the minority leader, I expect us to be late tonight. The chairman of the finance Committee said a full day tomorrow. I do not quite know what that means tomorrow evening. But if I were to guess, I would anticipate past the dinner hour. And then we will see where we go from there.

Mr. BYRD. Could the majority leader reveal anything concerning his plans, if he has plans, with respect to Thursday?

Mr. BAKER. Yes, Mr. President.

Mr. BYRD. I have inquiries particularly that go to that date.

Mr. BAKER. Yes, Mr. President. I understand that, and I know some Senators on both sides of the aisle are anxious to be a part of the official delegation to attend the funeral services of our former colleague, Senator